

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANGEL MERIDA HERRERA,

Defendant.

8:20-CR-75

**ORDER REGARDING
MAGISTRATE JUDGE'S
FINDINGS AND RECOMMENDATION**

This matter is before the Court on the Magistrate Judge's Findings and Recommendation on a Guilty Plea, [Filing 26](#), recommending that the Court accept Defendant's plea of guilty. There are no objections to the findings and recommendation. The Court notes there is no plea agreement between the parties in this case. Nonetheless, the Court declines to adopt the findings and recommendation at this time.

Pursuant to [28 U.S.C. § 636\(b\)\(1\)\(C\)](#) and NECrImR [11.2](#)(d), the Court has conducted a de novo review of the record. On its de novo review, the Court has reservations about whether the elements of the offense were completely stated on the record. Specifically, the Court notes the omission of the knowledge element announced in *Rehaif v. United States*, 139 S. Ct. 2191, 204 L. Ed. 2d 594 (2019), in which the Supreme Court held "that the word 'knowingly' [as used in [18 U.S.C. § 924\(a\)\(2\)](#) and applied to [18 U.S.C. § 922\(g\)](#)] applies both to the defendant's conduct and to the *defendant's status*." *Id.* at 2194 (emphasis added). A review of the plea hearing transcript reveals a lack of discussion regarding whether Defendant knew he was a member of a prohibited class (felon) at the time he possessed the ammunition. [Filing 31](#).

Accordingly, it is the Court's intent to further inquire on that matter at the sentencing hearing set for September 24, 2020, and decide then whether the plea should be accepted and the matter should proceed to sentencing. Counsel should be prepared to address that issue.

IT IS ORDERED:

1. The Magistrate Judge's Findings and Recommendation on a Guilty Plea, [Filing 26](#), are held in abeyance;
2. This matter will be taken up at the sentencing hearing set for September 24, 2020; and
3. This case shall provisionally proceed to sentencing.

Dated this 15th day of July, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge